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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ELIAS SPARTIS, JOHN MURDICK HOLLEY JR.,  
AARON LEE BATES, and RAYMOND R. SPIVEY SR.

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Appeal 2019-001563  
Application 14/925,019  
Technology Center 3700

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Before MICHAEL J. FITZPATRICK, MICHELLE R. OSINSKI, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1, 4–13, 16–22, 35, and 36. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Graphic Packaging International, Inc. (“Appellant”) is the Applicant, as provided for under 37 C.F.R. § 1.46, and Graphic Packaging International, LLC is identified as the sole real party in interest. Appeal Br. 1.

## STATEMENT OF THE CASE

### *The Specification*

The Specification's "disclosure relates to cartons having a handle comprising a material that is different than the material of the carton." Spec. ¶3.

### *The Rejected Claims*

Claims 1, 4–13, 16–22, 35, and 36 are rejected. Final Act. 2.<sup>2</sup> Claim 1 is illustrative and reproduced below.

1. A carton for containing at least one article, the carton comprising:

a plurality of panels that extends at least partially around an interior of the carton, the plurality of panels comprises a first side panel, a second side panel, a top panel foldably connected to each of the first side panel and the second side panel, and a first bottom panel and a second bottom panel in at least partial overlapping relation;

a plurality of end flaps for at least partially closing an end of the carton;

a handle in the top panel, the handle comprises a handle opening that has an edge entirely disposed in the top panel and a handle strap that extends across the edge of the opening, the handle strap attached to the top panel at attachment regions that include portions of the handle strap in face-to-face contact with the top panel and attached to the top panel by adhesive, the handle strap comprises a different material than the top panel.

Appeal Br. 44.

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<sup>2</sup> Claims 23 and 26–34 have been withdrawn from consideration. Final Act. 1. No other claims are pending. *Id.*

*The Examiner's Rejection*

The following rejection is before us for review: claims 1, 4–13, 16–22, 35, and 36, under 35 U.S.C. § 103, as being unpatentable over Weiner<sup>3</sup> and Bergstein.<sup>4</sup> Final Act. 2.

DISCUSSION

*Claims 1, 4–13, and 16–22*

Appellant argues the patentability of claims 1, 4–13, and 16–22 together. Appeal Br. 40 (Section “I.C.”). Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv). Separately, Appellant argues a subset of these claims together, namely claims 1, 7–9, 13, and 19–21. Appeal Br. 35 (Section “I.A.”). We consider all of Appellant’s arguments in support of claim 1, wherever placed in the Appeal Brief.

The Examiner found that Weiner discloses all of the subject matter of claim 1 except for a handle strap “attached to the top panel by adhesive.” Final Act. 2–3 (citing Weiner 1:65–2:15 and Figs. 1–2 (refs. 8–14, 17, 22, and 23)). The Examiner found that Bergstein teaches a box with carrying handle in which “the handle strap [is] attached to the top panel at attachment regions that include portions of the handle strap in face-to-face contact with the top panel and attached to the top panel by adhesive.” *Id.* at 3 (citing Bergstein 3:14–15 and Figs. 3 and 8 (refs. 2–5, 7, 9, 10, 12, 22, and 30)). In addition, the Examiner found that Bergstein’s handle is comprised of a different material than the box. *Id.* (citing Bergstein 3:5–40). More

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<sup>3</sup> US 2,760,716, issued Aug. 28, 1956 (“Weiner”).

<sup>4</sup> US 2,645,407, issued July 14, 1953 (“Bergstein”).

specifically, the box is described as “paperboard” (Bergstein 1:2), and the handle may be an “elastic” or “stretchable” material. *Id.* at 3:6–9.

Appellant does not persuade us of error in any of the Examiner’s findings regarding the teachings of Weiner and Bergstein. We acknowledge that “Appellant does not necessarily agree with the characterization of *Bergstein* relied upon in the Final Office Action, including the citation of col. 3 lines 14-15 in *Bergstein* as support for the proposition that *Bergstein* teaches a handle attached to a top panel by adhesive.” *See* Appeal Br. 36. However, to the extent that this is an argument, it is not persuasive. *See* Bergstein 3:14–15 (“I may attach [the handle element] to a wall of the box by spaced areas of adhesive.”), Figs. 1, 3, and 7 (showing handle 30 attached to *top* wall 1).

Returning to the Examiner’s rejection, we note that the Examiner concluded that “[i]t would have been obvious to one of ordinary skill in the art at the time of Applicant’s filing to adhere Weiner’s [existing] handle strap to the top panel in order to secure the handle of different material, as taught by Bergstein.” Final Act. 3. Additionally, the Examiner concluded that “[i]t would have been obvious to one of ordinary skill in the art at the time of Applicant’s filing to *substitute* Weiner’s handle with Bergstein’s handle as a known substitute for an element that is not unitary with the carton.” *Id.* at 4. Thus, the Examiner articulated two separate prior art combinations: (1) retaining Weiner’s handle 16 but attaching it via adhesion as taught by Bergstein (hereafter, “Modification 1”); and (2) incorporating both Bergstein’s handle as well as its attachment means (adhesion) (hereafter, “Modification 2”).

This is significant because Appellant argues against only Modification 1. *See, e.g.*, Appeal Br. 37 (arguing that “adhesion of *the handle 16 of Weiner* to the top panel 8” would result in “shearing action or failure of the handle 16” and that “the proposed modification to *Weiner* to adhere *the handle 16* to the top panel 8 would change the principle of operation” (emphasis added)).

Appellant does not argue against Modification 2. In fact, Appellant explicitly concedes that it presents no such arguments, stating:

The Examiner now appears to be asserting that it would have been obvious to entirely replace the handle 16 of *Weiner* with the handle element 30 of *Bergstein*, as opposed to modifying the handle 16 of *Weiner* as asserted in the Final Office Action. Since the former proposed modification was not previously introduced in any rejection, Appellant’s remarks herein address the proposed modification of the handle 16 of *Weiner* that was put forth in the Final Rejection.

Reply Br. 2 (footnote omitted).

Appellant is mistaken that Modification 2 was not previously introduced. *See* Final Act. 4 (“It would have been obvious to one of ordinary skill in the art at the time of Applicant’s filing to substitute *Weiner*’s handle with *Bergstein*’s handle as a known substitute for an element that is not unitary with the carton.”); *see also* Ans. 5 (“It would have been obvious to use *Bergstein*’s handle in place of the handle taught by *Weiner* as there is a reasonable expectation of success because the elastic material of *Bergstein*’s handle, which bows and flexes in use, remains adhered as it is lifted.”). Appellant has not apprised us of error with respect to Modification 2.

Accordingly, we affirm the rejection of claim 1 as unpatentable over Weiner and Bergstein, as well as that of claims 4–13, and 16–22, which fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*Claims 35 and 36*

Appellant argues the patentability of claims 35 and 36 separately from the patentability of the claims already addressed above. *See* Appeal Br. 38 (Section “I.B.”). However, Appellant’s arguments regarding claims 35 and 36 are not persuasive because they too address only Modification 1. *See* Appeal Br. 39 (discussing alleged problems with using/modifying Weiner’s handle 16 and not discussing Bergstein’s handle). Appellant has not apprised us of error with respect to Modification 2 in regards to claims 35 and 36.

Accordingly, we affirm the rejection of claims 35 and 36 as unpatentable over Weiner and Bergstein.

*Claim 11*

Appellant argues the patentability of claim 11 separately from the patentability of the claims already addressed above. *See* Appeal Br. 40 (Section “II.”). Claim 11 depends from claim 1 and recites that “the top panel is adjacent a respective side of at least one beverage container.”

Figure 1 of Weiner shows a carton containing at least three beer cans 15. Weiner 2:21–25, 2:69, and Fig. 1 (ref. 15). In the Final Action, the Examiner construed the word “adjacent” as used in claim 11 such that everything inside the carton is considered adjacent to the top panel. Final Act. 5 (“Given the broadest reasonable interpretation of ‘adjacent’, Examiner considers any and all parts of the articles to be adjacent to all parts of the carton insofar as said articles are confined within the boundaries of

each of the carton panels.”). In contrast, Appellant advocates—at least implicitly—for a much narrower construction that would require the cans to be oriented such that their longitudinal axis is oriented parallel to the plane of the carton’s top panel. *See* Appeal Br. 40 (“Appellant notes that *Weiner* appears to disclose cans 15, but that these cans 15 are oriented with their tops adjacent the top wall/top panel 8.”).

We adopt neither the Examiner’s explicit construction nor Appellant’s implicit construction. The Examiner’s construction is overly broad because it would render the entire limitation, “the top panel is adjacent a respective side of at least one beverage container,” superfluous. And Appellant’s construction is wholly unsupported by the language of claim 11, which speaks in terms of proximity, “adjacent,” not in terms of orientation (e.g., “perpendicular” or “parallel”). Appellant emphasizes the orientation of cans shown in its Figure 2. *See* Reply Br. 7 (citing Spec. ¶ 26, which discusses Fig. 2). That argument is not persuasive, as we will not import limitations from Appellant’s Specification into its claims. *See, e.g., Sjolund v. Musland*, 847 F.2d 1573, 1582 (Fed. Cir. 1988) (“[T]he claims define the invention. . . . [L]imitations from the specification are not to be read into the claims.”).

We construe the limitation, “the top panel is adjacent a respective side of at least one beverage container,” as requiring the top panel to be in close proximity with a side of a beverage container. It does not require any particular orientation of the beverage container. The Examiner adequately shows that *Weiner* discloses “the top panel is adjacent a respective side of at least one beverage container.” *See* Ans. 8 (annotated *Weiner* Fig. 1).

Appeal 2019-001563  
Application 14/925,019

Appellant has not apprised us of error with respect to the rejection of claim 11 over Weiner and Bergstein. Accordingly, we affirm the rejection of claim 11.

#### SUMMARY

The Examiner's rejection of claims 1, 4–13, 16–22, 35, and 36 under 35 U.S.C. § 103 is affirmed.

#### TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED